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10/19/2005

Fabio Pedrini

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EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT

PAPER NUMBER

3782

NOTIFICATION DATE

DELIVERY MODE

02/26/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/533,170	<b>Applicant(s)</b> PEDRINI, FABIO	
	<b>Examiner</b> Justin M. Larson	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 23-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-22 and 32-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 28 and 29 are objected to for being dependent on withdrawn claim 27. These claims have been withdrawn from consideration based on this dependency.
2. Claim 19 is objected to because Examiner believes that line 2 should read, in part, "a pair of upright sections". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 5-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "said strap engaging and tensioning means". This limitation lacks proper antecedent basis in the claim as no tensioning means has been previously set forth. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

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351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 5, 6, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Jeong (US 2002/0117524 A1).

Regarding claim 5, Jeong discloses an equipment carrier comprising: a frame (12/18/20) having lower engagement means (52) as claimed; a structure (46) as claimed; at least one vehicle engaging member (14) as claimed; a strap member (26) having upper engagement means (28) as claimed; at least one support (22) provided with strap engaging and tensioning means as claimed [0019]. Examiner notes that the strap (26) must inherently be secured to the strap engaging means (of 22) in order for the support (22) to function in retracting the strap. Also, the vehicle engaging member (14) is secured (via interconnecting portion of 18) to the support (22) such that the support (22) is located between the frame (lower portion of frame member 18 below 22) and the vehicle engaging member (14).

Regarding claim 6, the support (22) includes strap engaging means in the form of strap winding means [0019].

Regarding claim 9, the support must inherently define an interior into which the strap is stored in a wound configuration (to at least some degree, certainly to the extent claimed) in order to function in retracting the strap.

7. Claims 10-13 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Graber (US 4,863,080 A).

Regarding claims 10 and 32, Graber discloses an equipment carrier comprising: a frame (11/13) having lower engagement means (31/32) as claimed; a structure (12)

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as claimed; at least one vehicle engaging member (16) as claimed; a strap member (41) having upper engagement means (42) as claimed; at least one support (43) provided with strap engaging and tensioning means as claimed (the various apertures of buckles 43 serve as engaging and tensioning means to the extent claimed). The frame includes an upper portion (upper portions of 11 and including 13) and a lower portion (lower portions of 11) wherein the lower portion terminates in a lower hook arrangement (31/32) as claimed that provides a rigid connection (to the extent claimed) with the vehicle. Also, the vehicle engaging member (16) is located above the lower hook arrangement. The vehicle engaging member (16) is interconnected with the frame via a pivot connection (19) that defines a transverse pivot axis as claimed. Finally, Examiner notes that while the Graber carrier is not mounted to a trunk door as disclosed by Applicant, the trunk door is not being claimed in combination with the equipment carrier. The Graber carrier is capable of being mounted to some trunk door as claimed, even if not explicitly taught by Graber. The upper engagement means (42) is capable of engaging an upper edge of a movable vehicle component while the lower hook arrangement (31/32) engages a lower edge of the vehicle component and the vehicle engaging member (16) engages the vehicle component at a location between the upper and lower edges thereof.

Regarding claims 11 and 12, the vehicle engaging member is in the form of a U-shaped rocking member (17) having engaging feet as claimed.

Regarding claim 13, the lower hook arrangement (31/32) is interconnected with a forwardly facing end defined by a lower portion of said frame (11) as claimed.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeong as applied to claims 5, 6, and 9 above in view of O'Connor (US 4,298,151 A).

The Jeong carrier includes the claimed features except for an adjustable position engagement arrangement between the frame (12/18/20) and the support (22) to enable the vertical position of the support to vary relative to the frame. O'Connor, however, discloses a related carrier and teaches that it is known for a support (22) to be mounted via an adjustable position engagement arrangement (30) to the frame in order to accommodate differently shaped vehicles to which the rack might be mounted (col. 6 line 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have attached the support members (22) of Jeong to the frame (12/18/20) via an adjustable position engagement arrangement, the motivation being to better accommodate differently shaped vehicles, as taught by O'Connor.

10. Claims 1, 4, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber as applied to claims 10-13 above in view of O'Connor (US 4,298,151 A).

Regarding claim 1, the carrier of Graber includes the claimed features except for the support being mounted via an adjustable position engagement arrangement to the frame. O'Connor, however, discloses a related carrier and teaches that it is known for a

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support (22) to be mounted via an adjustable position engagement arrangement (30) to the frame in order to accommodate differently shaped vehicles to which the rack might be mounted (col. 6 line 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have attached the straps, support members, and vehicle engaging members (16) of Graber to the frame via an adjustable position engagement arrangement, the motivation being to better accommodate differently shaped vehicles, as taught by O'Connor. Examiner notes that such adjustable position engagement arrangement would essentially be in the form of a collar, as taught by O'Connor, placed around a portion of the frame (11).

Regarding claim 4, the vehicle engaging member (16) is mounted (via interconnecting structure in 19 and the strap) to the support (43).

Regarding claim 14, the frame (11/13) includes at least one upright section (11), and wherein said strap member support (43) is mounted on said upright section by connecting means (the adjustable position engagement arrangement added above) enabling an adjustment of the position of said support along said upright section.

11. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeong in view of O'Connor as applied above, further in view of Huang (US 6,007,053 A).

The modified Jeong carrier includes the claimed features except for the strap engaging and tensioning means comprising a ratchet positioning mechanism, a tensioning member, and a release control member. Jeong seems to disclose a similar mechanism (22) but does not specify the mechanism's details. Huang, however, discloses a strap adjustment member comprising a ratchet positioning mechanism

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(50/20), a tensioning member (40), and a release control member (70) that allows for fine tightness adjustment (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the strap adjustment members of Jeong with ratcheting mechanisms, the motivation being to allow for fine tightness adjustment, as taught by Huang.

12. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber in view of O'Connor as applied above, further in view of Huang (US 6,007,053 A).

The modified Graber carrier includes the claimed features except for the strap engaging and tensioning means comprising a ratchet positioning mechanism, a tensioning member, and a release control member. Graber simply discloses the use of a buckle for adjusting the strap length. Huang, however, discloses a strap adjustment member comprising a ratchet positioning mechanism (50/20), a tensioning member (40), and a release control member (70) that allows for fine tightness adjustment (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the strap adjustment buckles of Graber with ratcheting mechanisms, the motivation being to allow for fine tightness adjustment, as taught by Huang.

13. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeong as applied to claims 5 and 6 above in view of Huang (US 6,007,053 A).

The Jeong carrier includes the claimed features except for the strap engaging and tensioning means comprising a ratchet positioning mechanism, a tensioning

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member, and a release control member. Jeong seems to disclose a similar mechanism (22) but does not specify the mechanism's details. Huang, however, discloses a strap adjustment member comprising a ratchet positioning mechanism (50/20), a tensioning member (40), and a release control member (70) that allows for fine tightness adjustment (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the strap adjustment members of Jeong with ratcheting mechanisms, the motivation being to allow for fine tightness adjustment, as taught by Huang.

14. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber in view of O'Connor as applied to claim 14 above, further in view of Littlepage et al. (US 5,385,280 A).

Regarding claim 16, the modified Graber carrier includes the claimed features except for the connecting means being in the form of clamp means adapted to be tightened around the frame by means of a screw. Littlepage, however, teaches (Figure 2) that it is known to connect a device to the vertical component (24) of a carrier frame using connecting means in the form of clamping means (52) adapted to be tightened around the frame by means of a screw (46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the connecting means of the modified Graber carrier with clamp means, as taught by Littlepage, the motivation being to allow the position of the support to be varied and maintained along the length of the frame.

Regarding claim 17, the modified Graber carrier includes the claimed features except for the frame having a flat surface. The frame of Graber is round. O'Connor, however, teaches that it is known for such a frame to have flat sides. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the frame of the modified Graber carrier with flat sides since such a frame design was known in the art, as taught by O'Connor. Examiner is of the position that the screw of the clamp means of the modified Graber carrier is capable of engaging the flat surface to the extent claimed.

Regarding claim 18, the clamp means of the modified Graber carrier can be considered the claimed supporting structure that includes a U-bent metal sheet having cut-away portions as claimed, as taught by Littlepage.

15. Claims 19 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber as applied to claim 13 above in view of Pedrini (US 5,495,970 A).

Regarding claim 19, the carrier of Graber includes the claimed features except for an array of angularly spaced axial ridges being used to mount the equipment-carrying structure. Pedrini, however, discloses a related carrier and teaches that it is known for a frame's cross member (4a) to include ridges (4) upon which a toothed hub of an equipment carrier (5) is mounted in order to vary the angle of the equipment carrier (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed ridges on the cross member of Graber and a toothed hub on the carrying structure of Graber, the motivation being to allow for varying the angle of the structure, as taught by Pedrini.

Regarding claim 33, the equipment carrying structure of the modified Graber carrier is selected as claimed.

16. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber in view of Pedrini as applied to claim 19 above, further in view of Bloemer et al. (US 5,573,165 A).

The modified Graber carrier includes the claimed features except for the ridges being on an engagement member surrounding the cross member where the engagement member and hub are of split construction. Bloemer, however, discloses a related carrier and teaches that it is known for an engagement member (106) to be placed between a cross member (112) and the hub (104) of an equipment carrier (100), where the engagement member and the hub are of split construction (Figure 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have placed an engagement member between the cross member and equipment carrier of the modified Graber carrier, as taught by Bloemer, as such design was known in the art and to form the ridges on the engagement member so that when removed, the rack could be used with equipment carriers not having toothed hubs. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the hub of the modified Graber carrier of split construction, as taught by Bloemer, the motivation being to allow the hub to be clamped tightly to the cross member.

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17. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graber in view of O'Connor as applied to claim 1 above, further in view of Pedrini and Ferman (US 2002/0047031 A1).

The modified Graber carrier includes the claimed features except for means for mounting and curved lower sections of the frame to which hook carrying members having hooks are attached.

Regarding the means for mounting, Pedrini discloses a related carrier and teaches that a means (4) for mounting the equipment carrier to the frame is utilized in order to vary the angle of the equipment carrier. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used means for mounting, as taught by Pedrini, on the Graber carrier in order to vary the angle at which the equipment carrier was held.

Regarding the curved lower sections with hooks, Ferman discloses a related carrier and teaches that lower curved portions (5,6) with hooks (21) as used to secure the lower end of the carrier to a vehicle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the hook members (31) of Graber with curved sections having hooks, as taught by Ferman, as a mere substitution of known lower carrier mounting means.

18. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jeong as applied to claim 5 above in view of Pedrini and Ferman (US 2002/0047031 A1).

The Jeong carrier includes the claimed features except for means for mounting and curved lower sections of the frame to which hook carrying members having hooks are attached.

Regarding the means for mounting, Pedrini discloses a related carrier and teaches that a means (4) for mounting the equipment carrier to the frame is utilized in order to vary the angle of the equipment carrier. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used means for mounting, as taught by Pedrini, on the Jeong carrier in order to vary the angle at which the equipment carrier was held.

Regarding the curved lower sections with hooks, Ferman discloses a related carrier and teaches that lower curved portions (5,6) with hooks (21) as used to secure the lower end of the carrier to a vehicle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the traction members (52) of Jeong with curved sections having hooks, as taught by Ferman, in order to better secure the carrier to the vehicle. With such hooks at the lower portion of the frame, the use of straps for engaging the lower edge of the vehicle (as seen in Figure 1) would not be necessary.

19. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graber as applied to claim 10 above in view of Pedrini and Ferman (US 2002/0047031 A1).

The Graber carrier includes the claimed features except for means for mounting and curved lower sections of the frame to which hook carrying members having hooks are attached.

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Regarding the means for mounting, Pedrini discloses a related carrier and teaches that a means (4) for mounting the equipment carrier to the frame is utilized in order to vary the angle of the equipment carrier. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used means for mounting, as taught by Pedrini, on the Graber carrier in order to vary the angle at which the equipment carrier was held.

Regarding the curved lower sections with hooks, Ferman discloses a related carrier and teaches that lower curved portions (5,6) with hooks (21) as used to secure the lower end of the carrier to a vehicle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the hook members (31) of Graber with curved sections having hooks, as taught by Ferman, as a mere substitution of known lower carrier mounting means.

### ***Response to Arguments***

20. Applicant's arguments with respect to claim 1 and Jeong and Graber have been considered but are moot in view of the new ground(s) of rejection where O'Connor is used to teach an adjustable position engagement arrangement.

21. Applicant's arguments with respect to claim 5 and Jeong have been fully considered but they are not persuasive. Applicant has asserted that Jeong contains no showing or suggestion of a vehicle engaging means which is secured to a support in combination with a frame to which the support is secured. Examiner notes that Jeong includes a vehicle engaging means (14) which is secured (via an upper portion of the frame) to a support (22) in combination with a frame (18/20). See paragraph 6 above.

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22. Applicant's arguments with respect to claim 10 and Graber have been fully considered but they are not persuasive. Applicant has asserted that Graber fails to disclose a lower portion of the frame terminating in a lower hook arrangement. Examiner notes that Graber discloses a hook arrangement (31/32) at a lower end of the frame (11). The lower portion of the frame is thus considered to terminate in a lower hook arrangement as claimed. The claims do not structurally distinguish the lower hook arrangement from this assembly (31/32) of Graber. Applicant has asserted that Graber fails to disclose the carrier mounted to a movable vehicle component. As set forth in paragraph 7 above, Examiner notes that while the Graber carrier is not mounted to a trunk door as disclosed by Applicant, the trunk door is not being claimed in combination with the equipment carrier. The Graber carrier is capable of being mounted to some trunk door as claimed, even if not explicitly taught by Graber. The upper engagement means (42) is capable of engaging an upper edge of a movable vehicle component while the lower hook arrangement (31/32) engages a lower edge of the vehicle component and the vehicle engaging member (16) engages the vehicle component at a location between the upper and lower edges thereof.

### ***Conclusion***

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571)272-8649. The examiner can normally be reached on Monday-Friday, 9a-5p (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justin M Larson/  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782